

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,
AMERICAN AIRLINES, INC.,
DELL INC.,
HYATT CORPORATION,
MARRIOTT INTERNATIONAL, INC., &
BARNES & NOBLE, INC.,

Defendants.

CASE NO. 6:08-cv-447-LED

JURY TRIAL DEMANDED

**PLAINTIFF EMG TECHNOLOGY LLC'S
ANSWER TO DEFENDANT DELL INC.'S ANSWER AND COUNTERCLAIMS TO
FIFTH AMENDED COMPLAINT**

EMG Technology, LLC ("EMG") hereby responds to the Counterclaims of Dell Inc. ("Dell") (Docket No. 173) asserted in response to EMG's Fifth Amended Complaint as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaims. EMG expressly denies that Dell is entitled to any relief whatsoever in connection with its Counterclaims, including, but not limited to, all relief requested in Dell's Prayer for Relief.

PARTIES

1. Responsive to Counterclaim Paragraph 1, EMG admits the allegations.
2. Responsive to Counterclaim Paragraph 2, EMG admits the allegations.

JURISDICTION AND VENUE

3. Responsive to Counterclaim Paragraph 3, EMG admits the allegations.
4. Responsive to Counterclaim Paragraph 4, EMG admits that it has filed a Complaint against Dell seeking, *inter alia*, a judgment that Dell has infringed the claims of the '196 patent and the '845 patent, and that Dell has denied those allegations. EMG admits that an

actual controversy currently exists between EMG and Dell regarding the infringement and validity of the '196 patent and the '845 patent. Except as expressly admitted, EMG denies the remaining allegations contained in Counterclaim Paragraph 4.

5. Responsive to Counterclaim Paragraph 5, EMG admits that it is subject to personal jurisdiction in this Court. Except as expressly admitted, EMG denies the remaining allegations.

6. Responsive to Counterclaim Paragraph 6, EMG admits that this Court is a proper venue for this action. Except as expressly admitted, EMG denies the remaining allegations.

COUNTERCLAIM I
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '196 PATENT

7. Responsive to Counterclaim Paragraph 7, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-6 above as though fully set forth herein.

8. Responsive to Counterclaim Paragraph 8, EMG admits that an actual controversy currently exists between EMG and Dell regarding Dell's infringement of the '196 patent. Except as expressly admitted, EMG denies the remaining allegations.

9. Responsive to Counterclaim Paragraph 9, EMG denies the allegations.

COUNTERCLAIM II
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '845 PATENT

10. Responsive to Counterclaim Paragraph 10, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-9 above as though fully set forth herein.

11. Responsive to Counterclaim Paragraph 11, EMG admits that an actual controversy currently exists between EMG and Dell regarding Dell's infringement of the '845 patent. Except as expressly admitted, EMG denies the remaining allegations.

12. Responsive to Counterclaim Paragraph 12, EMG denies the allegations.

13. Responsive to Counterclaim Paragraph 13, EMG denies the allegations.

COUNTERCLAIM III
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘196 PATENT

14. Responsive to Counterclaim Paragraph 14, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-13 above as though fully set forth herein.

15. Responsive to Counterclaim Paragraph 15, EMG admits that an actual controversy currently exists between EMG and Dell regarding the validity of the ‘196 patent. Except as expressly admitted, EMG denies the remaining allegations.

16. Responsive to Counterclaim Paragraph 16, EMG denies the allegations.

COUNTERCLAIM IV
DECLARATORY JUDGMENT OF INVALIDITY OF THE ‘845 PATENT

17. Responsive to Counterclaim Paragraph 17, EMG incorporates by reference its responses to Counterclaim Paragraphs 1-16 above as though fully set forth herein.

18. Responsive to Counterclaim Paragraph 18, EMG admits that an actual controversy currently exists between EMG and Dell regarding the validity of the ‘845 patent. Except as expressly admitted, EMG denies the remaining allegations.

19. Responsive to Counterclaim Paragraph 19, EMG denies the allegations.

EMG’S AFFIRMATIVE DEFENSES TO DELL’S COUNTERCLAIMS

EMG asserts the following affirmative defenses to Dell’s Counterclaims:

First Affirmative Defense (Failure to State a Claim)

20. The Counterclaims fail to state a claim upon which relief may be granted against EMG.

Second Affirmative Defense (Laches)

21. The claims asserted in the Counterclaims are barred by the doctrine of laches.

Third Affirmative Defense (Waiver)

22. The claims asserted in the Counterclaims are barred by the doctrine of waiver.

Fourth Affirmative Defense (Estoppel)

23. The claims asserted in the Counterclaims are barred by the doctrine of estoppel.

24. EMG reserves the rights to assert any other defenses to Dell's Counterclaims that discovery may reveal.

PRAYER FOR RELIEF

WHEREFORE, EMG prays that this Court enter judgment against Dell as follows:

(a) Dismissing Dell's Counterclaim with prejudice and ordering that Dell is entitled to no recovery on the Counterclaim, including but not limited to all relief requested in Dell's Prayer for Relief;

(b) Ordering that this is an exceptional case pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and

(c) Awarding EMG such other and further relief as this Court deems just and appropriate.

JURY DEMAND

EMG demands a jury trial on all issues so triable.

Dated: November 30, 2009

Respectfully submitted,

PARKER, BUNT & AINSWORTH, P.C.

OF COUNSEL:

By: /s/ Charles Ainsworth

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 30th day of November, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth

CHARLES AINSWORTH

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